agreement concluded on the usual printed form used by the trustees in accordance with clause (h).

In my opinion the agreement of 1958, notwithstanding the fact that it is on a printed form used for tenancies and describes the parties as landlord and tenant, does not create a tenancy at all but only a contractual licence terminable by one month's notice in writing given by either party for the following reasons:—

(i) The intention of the parties to the agreement must be sought not from the mere words of their contract but its substance and the conduct of the parties and the surrounding circumstances can be scrutinised in order to determine whether or not all that was intended was that the occupier should be granted a personal privilege with no interest in the land. The relationship of the parties is determined by the law and not by the label which they choose to put on it (see *Commissioners of Customs and Excise* v. *Poole Finance.*[1] Lord Justice Denning reiterates this proposition in *Facchini* v. *Bryson.*[2] There are numerous other authorities for the proposition that that which is called a lease may only amount to a licence and that a so-called licence may well be construed to create a lease.

(ii) The space "let out" to the defendant is not demarcated with that precision which one would expect to find in a lease and I am in considerable doubt about the exact situation of the space in question. According to the defendant himself some space was pointed out to him by S.A.A. Alkaff with his feet. Whilst appreciating the defendant's candour in this respect, I must say that anyone who expects to acquire a lease by this means must be an optimist. The agreement itself mentions "the second pillar on the right hand side of the Arcade from the entrance from Raffles Place. Size of premises 6 feet high, 4 feet wide and 8 inches depth". In my opinion it would be a clear abuse of language to regard this description as being at all adequate for the purpose of a lease.

(iii) The control of the entire Arcade lay at all times and still lies with the trustees who employed and still employ their own watchman to guard the entire passageway. It seems to me quite clear from the evidence and from the agreement that all that was intended by the parties was that the defendant should be permitted to use, for the purposes of his business, a space 6 feet high, 4 feet wide and 8 inches deep at the second pillar in the common passageway during the hours when the gates were kept open and nothing more. To regard such an agreement as conferring, on the defendant, exclusive possession of any particular space in the Arcade would, in my opinion, be a grave departure from the use of common sense. The description and dimensions shown on the agreement are consonant with a permissive occupation during business hours of some air-space located vaguely at the second pillar but, where exactly, no one knows. The case of *Rendell* v. *Roman & Anor.*[3] where the defendants let to one W a stall at an exhibition at a weekly rent, but W was not to use it before 10 a.m. nor after 11 p.m. is apposite. It was there held that only a mere licence was conferred. In the present case, the defendant was not even allocated a stall.

(iv) The "rent" of $40 per month admittedly includes an element for the use of electric power supplied by the trustees. In the case of *Hancock* v. *Austin*[4] the owner of a factory was in the habit of letting "standings" therein for lace-machines, himself supplying the power for working them. It was held in that case that there was no right to distrain for rent for so much of the floor as the machines stood on and Williams J. was clearly of opinion that the facts did not disclose a demise of the floor. The defendant in the present case was clearly granted, at the most, the use of only "standing room" on the side of the passageway to sell his wares at "the second pillar".

On the whole I am of the opinion that the law is overwhelmingly in favour of the plaintiffs' contention and I would, therefore, allow the plaintiffs' claim with costs against this defendant.

I am not disposed to view the claim by the plaintiffs for damages, in respect of the defendant's over-stay at the site since the expiry of the notice to quit, with any particular favour. I think that the former trustee who granted these so-called "tenancies" to way-side "hawkers" at what appears to be additional premia personal to himself has contributed to their unsavoury position for which damages against them would be unjust in all the circumstances. Gratitude for the service done to the public by the trustees in clearing the Arcade of obstructive occupiers of the passageway should be their sufficient reward.

Claim allowed.

Solicitors: *Ironside & de Souza; J. Tan Chor-Yong & Co.*

KHALIK v. THAI CRAFT LTD.

[O.C.J. (Chua J.) March 23, 1965]

[Singapore — Suit No. 1135 of 1962]

Landlord and Tenant — Premises let to person carrying on business with another person as partner — Acceptance of partners as tenants — Partners allowing company in which they are shareholders to occupy premises as licencees — Claim for possession — Tenancy not lawfully terminated — Landlord cannot maintain action for trespass against persons in occupation by

leave and licence of tenants — Whether Statute of Frauds applicable in Singapore — Civil Law Ordinance, (Cap. 24) s. 3(g).

In this case the facts as found at the trial were that the plaintiff let the premises in question to a Mr. George Perry who subsequently carried on business at the premises with a Miss Lee under the style of Thai Craft. The firm was subsequently incorporated as Thai Craft Ltd., with Miss Lee and one Tooke, as the principal shareholders. Although rents were paid by cheques of Thai Craft and later Thai Craft Ltd., the receipts were issued in the name of Perry. In 1961 Perry left Singapore after selling his interest in the business. The plaintiff issued a notice to quit to Thai Craft Ltd., and subsequently claimed possession of the premises. The plaintiff's case was that the premises were let to Perry and as Perry was no more interested in the premises he was entitled to recover possession. He also alleged that if there had been an assignment of the premises, as there was no document in writing, the assignment was void by reason of section 3 of the Statute of Frauds.

Held: (1) on the facts the plaintiff had by novation accepted Perry and Miss Lee as his tenants and the defendants were the licencees of Perry and Miss Lee;

(2) as the tenancy of Perry and Miss Lee had not been lawfully determined the plaintiff could not maintain any action of trespass against the defendants;

(3) there had been no assignment of the tenancy by Perry and Miss Lee but if there had been an assignment it would have been void as it was not in writing as required by section 3 of the Statute of Frauds which was in force in Singapore by virtue of section 3(g) of the Civil Law Ordinance.

CIVIL SUIT.

Y. Jumabhoy for the plaintiff.

J. D. Donnelly (*Po Guan Hock* with him) for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case claims possession of the premises comprising the ground floor of No. 11 The Arcade.

The facts are shortly these. The plaintiff is the chief tenant of the whole of the premises known as No. 11 The Arcade which are rent controlled premises. In July, 1956, George Perry, an American who was the manager of the American President Lines in Singapore, and Miss Eunice Lee formed a partnership to carry on the business of selling Thai silk. Sometime in August, 1956, Perry was introduced to the plaintiff by one Nabi, a former business associate of the plaintiff. After negotiations the plaintiff agreed to rent out the ground floor of No. 11 The Arcade (which I will hereafter refer to as "the said premises"), to Perry. The agreement was that the sum of $3,000, representing half the rent for one year, was to be paid forthwith and the other half of the rent, $250, was to be paid monthly. The other terms of the agreement were contained in a document signed by the plaintiff after he had received the $3,000 from Perry. The document was dated the 24th September, 1956, and reads as follows:

"Occupation of premises at ground floor, 11 The Arcade, by Thai Craft is extended to 31st December, 1961, on payment as follows:—

$3,000 on October 15, 1959.
$3,000 on October 15, 1960.
$750 on October 15, 1961.

plus each month the sum of $250 *plus* reimbursement of rent and utilities."

The $3,000 due on the 15th October, 1959, was paid to the plaintiff by Thai Craft cheque signed by Miss Lee and the monthly rents from November, 1959, to October, 1960, were paid by Thai Craft cheques signed by Miss Lee. The receipts were issued by the plaintiff in the name of Perry. On the 14th May, 1960, Thai Craft was incorporated and registered and carried on business at the said premises. The shareholders of Thai Craft Ltd. at the date of registration were Miss Lee and Tooke. Perry, however, continued to have an interest in the business. The bulk of the shares was held by Miss Lee while Tooke held only one share. The present shareholders are Miss Lee and her two children. On the 5th October, 1960, the plaintiff was paid the sum of $3,000 by Thai Craft cheque signed by Miss Lee. The rents from November, 1960, up to January, 1961, were paid by Thai Craft cheques all signed by Miss Lee. The rents from February, 1961, to December, 1961, were paid to the plaintiff by Thai Craft Ltd. cheques signed by Miss Lee. All receipts were issued by the plaintiff in the name of Perry. In September, 1961, Perry was transferred and left Singapore for Japan after selling his interest in the business to Miss Lee. On the 30th December, 1961, the plaintiff through his solicitors wrote the following letter to the defendants:

"We have been instructed by Mr. M.I.A. Khalik of No. 11 The Arcade, Singapore, to write to you as follows.

Our client informs us that his tenant of the abovementioned premises, Mr. George Perry, has agreed with our client that the said premises No. 11 The Arcade, Ground Floor, will be vacated by your firm on the 31st of December, 1961. Thus, as instructed, this is to remind you that you should vacate and give vacant possession of the said premises to our client on the 31st of December, 1961.

Please note that unless you vacate the said premises on the 31st of December, 1961 our client will have no other alternative but to take the necessary proceedings against you for the recovery of the possession of the said premises without further notice."

The defendants refused to vacate the said premises. On the 6th September, 1962, the plaintiff instituted the present proceedings.

The plaintiff's case is that he let the said premises to Perry and no one else. He said that Perry told him that Thai Craft belonged to Perry and that Miss Lee would be managing the business and signing the cheques and that he had no idea at all that the business was a partnership and that he never suspected Miss Lee was a partner until after 1961.

The defendants' case is shortly this. After the formation of the partnership between Perry and Miss Lee, Perry was given the task of looking for suitable premises to carry on the partnership business. It was Perry alone who conducted the negotiations with the plaintiff for the tenancy of the said premises in August, 1956, but he consulted Miss Lee before reaching agreement with the plaintiff and that he took the tenancy for himself and Miss Lee. Very soon after the plaintiff had granted the tenancy Perry introduced Miss Lee to the plaintiff as his partner in Thai Craft. It was Miss Lee who managed the partnership business to the knowledge of the plaintiff. Before the agreement of 14th August, 1959, was reached discussions had previously taken place between Perry and the plaintiff and on one or two of those discussions Miss Lee also took part and before Perry wrote out the agreement of the 14th August he said he had to consult Miss Lee and there and then he consulted Miss Lee on the telephone in the presence of the plaintiff. The tenancy from 15th October, 1959, was granted by the plaintiff to the partnership Thai Craft. The tenancy of the said premises was assigned by Perry and Miss Lee to the defendants on or about the 9th June, 1960. There is, however, no document of assignment.

It is the contention of the defendants that the plaintiff knew that Perry sought the tenancy of the said premises for himself and Miss Lee his partner in Thai Craft and that Perry negotiated for the tenancy and entered into the said agreement of the 24th September, 1956, as agent for and on behalf of the partnership. Now what is Perry's evidence? He said that he could not recall clearly whether he did or he did not tell the plaintiff that he intended to carry on the business alone or with anybody else. Upon the evidence before me I find that Perry did not tell the plaintiff that he was going to carry on the business in partnership with Miss Lee when he was negotiating for the tenancy in 1956 and I further find that the plaintiff granted the tenancy of the said premises on the 24th September, 1956, to Perry and not to Perry and Miss Lee.

Now it falls to be considered whether the plaintiff knew that Miss Lee was a partner in Thai Craft and if he knew when he became aware of it. I need not go into the details of the evidence but upon the evidence that I have before me I was left in no doubt whatsoever that Perry's and Miss Lee's version of the facts was substantially correct and that the plaintiff's version was untrue. I find that Miss Lee was introduced by Perry to the plaintiff as his partner in Thai Craft shortly after the 24th September, 1956.

The evidence is clear that the plaintiff accepted the $3,000 in 1957 and the $3,000 in 1958 from Thai Craft and he accepted rent from Thai Craft from 1956 up to 1959 knowing that Miss Lee was a partner in Thai Craft. When the tenancy was extended in 1958 and 1959 the plaintiff, in my view, by novation had accepted Perry and Miss Lee as his tenants.

Even if there is doubt that the plaintiff became aware that Miss Lee was a partner in Thai Craft in 1956 there certainly can be no doubt that the plaintiff knew that Miss Lee was a partner of Perry's in Thai Craft at the time when negotiations were conducted which led to the new agreement of the 14th August, 1959, when the tenancy was granted to Thai Craft. It is clear that a lease to a firm is a lease to the partners, as joint tenants.

There is another important question for decision in this case. Was there an assignment by Perry and Miss Lee to the defendants? Counsel for the plaintiff urged upon the court to hold that on the balance of probabilities there was in fact a prohibition against sub-letting and assigning. The plaintiff in his evidence said that he did not expressly say to Perry that the tenancy was for him only but "that was understood". I find as a fact that there was no prohibition against sub-letting or assigning but there is no evidence before me of any actual assignment or attempted assignment of the tenancy itself by Perry and Miss Lee to the defendants. All that happened in regard to the tenancy, so it appears to me, is that Perry and Miss Lee allowed the defendants to have possession of the said premises and to carry on business there. In my view the defendants are licensees of Perry and Miss Lee. The fact that Perry's and Miss Lee's tenancy has not been lawfully determined the plaintiff cannot maintain any action of trespass against the defendants who are in occupation by leave and licence of Perry and Miss Lee.

That disposes of this matter but as both counsel have argued at length on section 3 of the Statute of Frauds, I feel that I should express my views on the matter. It was submitted by counsel for the plaintiff that the assignment of the tenancy by Perry and Miss Lee to the defendants, as alleged by the defendants, was void as it was not in writing as required by section 3 of the Statute of Frauds. It was submitted by counsel for the defendants that section 3 of the Statute of Frauds was no longer in force in this State. It was contended (i) that when section 3 was repealed in England in 1925 it ceased to be in force also in this State and (ii) that section 3 was no longer in force in this State after the coming into force of The Singapore (Constitution) Order in Council, 1958, as by section 121(1) and section 121(7) of the said Order in Council the only laws which continued in force on the coming into operation of the said Order in Council were the enactments of the Legislature

in Singapore enacted before the coming into operation of the said Order in Council. With all due respect to learned counsel this contention falls to the ground. The repeal in England of section 3 of the Statute of Frauds does not affect this State. Section 121 of the said Order in Council in my view does not affect the English laws that were introduced into Singapore by the Charter of Justice of 1826 and those laws still continue to be in force. Furthermore section 3 of the Statute of Frauds is still in force in Singapore by virtue of section 3(g) of the Civil Law Ordinance (Cap. 24).

To keep the record straight, the application of the plaintiff at the hearing to file a reply and plead section 3 and section 4 of the Statute of Frauds is granted.

For these reasons the plaintiff's claim fails and must be dismissed with costs.

Claim dismissed.

Solicitors: *Mallal & Namazie; Battenberg & Talma.*

HEW WENG KONG v. NABISHAH

[O.C.J. (Abdul Aziz J.) March 24, 1966]

[K.L. — Civil Suit No. 1579 of 1965]

Practice and Procedure — Order 14 — Leave to sign final judgment — Whether there are substantial questions to be tried — Triable issue — R.S.C., 1957, O. 14.

In this case an application for leave to sign final judgment under Order 14 of the Rules of the Supreme Court was refused as it was held that there were substantial questions to be tried.

Cases referred to:—

(1) *Codd* v. *Delap* (1905), 92 L.T. 910, H.L.

(2) *Jacobs* v. *Booths Distillery Co.* (1901), 85 L.T. 262, H.L.

CIVIL SUIT.

J. K. S. Lai for the plaintiff.

M. Abraham for the defendant.

Cur. Adv. Vult.

Abdul Aziz J.: This is an application by way of summons in chambers under Order 14 of the Rules of the Supreme Court for leave to sign final judgment.

The facts are rather complicated. The dispute centred round one of the houses in a housing estate on Lot 82 Petaling in respect of which one Tan Yew Lai was the original purchaser. Tan Yew Lai sold the property to the plaintiff by way of an agreement in May 1965 and a month later the plaintiff sold the property to the defendant also by way of an agreement for a total purchase price of $7,098. On the execution of the sale agreement the defendant paid to the plaintiff $2,618.80 towards the purchase price, the balance of $4,479.20 to be paid on or before the 31st August 1965. It was mutually agreed that time shall be of the essence of the contract. It was also a term (clause 5 of the sale agreement) that if the defendant failed to pay the balance on or before the stipulated date, 31st August 1965, then the sale agreement shall be terminated and shall be null and void and of no effect and the sum of $2,618.80 paid under clause 1 of the sale agreement shall be forfeited to the plaintiff as liquidated damages and the defendant's licence to occupy the said Lot 82 shall be terminated and the premises vacated. The defendant having failed to complete the purchase on the stipulated date, the plaintiff thereupon exercised his option under clause 5 by forfeiting the deposit money and has now issued a writ for an order of possession and damages. The defendant entered appearance to this action on the 30th November and on the 16th December, before the delivery of the statement of defence the plaintiff moved the court for leave to sign judgment under Order 14. The affidavit in support of the summons merely repeated the averments in the statement of claim and contended that there was no defence to this action and the defendant entered an appearance merely for the purpose of delay. The defendant filed an affidavit in reply admitting the execution of the sale agreement but contended that the plaintiff by his subsequent conduct has waived clause 5 of the agreement that time shall be of the essence of the contract. It appeared from the affidavit that this was not a straightforward case of breach of contract. She said that on 14th October 1965 she wrote to the plaintiff's solicitors seeking settlement and tendering $1,000. On 1st November 1965 the plaintiff's solicitors accepted the terms of settlement and gave her until 4th November 1965 to finalise the matter. Further correspondence followed but somehow settlement failed because it seemed that whilst the heads of agreement were agreeable to both parties the question of solicitors cost was unresolved. The plaintiff filed an affidavit in reply to the defendant, the main point of which was that all these negotiations for settlement were without prejudice and since the negotiations failed the defendant was precluded from referring to them.

Two leading House of Lords cases set the tone for Order 14 judgments. In *Codd* v. *Delap* [1] it was said that "Order 14 is a very useful process indeed but it has to be used with great care and must not be used unless it is clear that there is no substantial question to be tried". Again in *Jacobs* v. *Booths Distillery Co.* [2] the House of Lords coined the phrase "a triable issue" as entitling a defendant to unconditional leave to defend. In this summons no statement